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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DOUGLAS GERARD BROOKS, Defendant and Appellant.	A124143 (Solano County Super. Ct. No. FCR258563)
In re DOUGLAS GERARD BROOKS, On Habeas Corpus.	A126334 (Solano County Super. Ct. No. FCR258563)

This matter involves a consolidated appeal and petition for writ of habeas corpus challenging the denial of a motion to suppress filed by appellant Douglas Gerard Brooks pursuant to Penal Code section 1538.5, and the effectiveness of assistance he received from counsel in connection with that motion.[1] Following denial of his motion, appellant pled no contest to transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a), and admitted a prior conviction under Health and Safety Code section 11370.2. Appellant thereafter received a six-year prison sentence and was committed to the California Rehabilitation Center. For reasons set

[1] Unless otherwise stated, all statutory citations herein are to the Penal Code.

forth below, we conclude that appellant's petition for writ of habeas corpus has merit, and thus that we must remand this matter to the trial court to ensure he receives effective assistance of counsel in connection with his suppression motion.

FACTUAL AND PROCEDURAL BACKGROUND

On September 25, 2008, an information was filed charging appellant with transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) (count 1), possession of a controlled substance (*id*., § 11377, subd. (a)) (count 2), possession of paraphernalia for smoking a controlled substance (*id*., § 1364) (count 3), and driving with a suspended license (Veh. Code, § 14601.5, subd. (a)) (count 4). The information further alleged that appellant had sustained two prior drug convictions within the meaning of Health and Safety Code section 11370.2, subdivision (c), and had served three prior prison terms within the meaning of section 667.5, subdivision (b).

The charges stemmed from appellant's arrest on the night of August 23, 2008. At about 1:30 a.m. on that date, Officer Nathan Strickland was on patrol near the intersection of First and West Texas Streets in the City of Fairfield. From a distance of about 150 feet, Officer Strickland observed a red 1985 Nissan 280Z stopped at the intersection at the stop sign, with about three-quarters of the vehicle's length positioned beyond the stop sign limit line. Officer Strickland, who was driving west on West Texas Street, slowed down and waited for the vehicle to turn right at the intersection onto West Texas Street, after which he stopped the vehicle for a traffic violation. During the traffic stop, Officer Strickland determined that appellant, the driver, was driving with a suspended license. Officer Strickland thus arrested appellant for this offense and, during a search incident to the arrest, found 2.47 grams of methamphetamine in the left hand pocket of appellant's jacket and a glass pipe in the vehicle's door panel.

On October 27, 2008, appellant moved to suppress the evidence seized from his person and vehicle on the night in question. A hearing on appellant's motion began on November 6, 2008, at which Officer Strickland, the arresting officer, and Rick Williams, a defense investigator, testified. Following the hearing, the trial court denied appellant's motion.

Thereafter, on January 30, 2009, appellant pled no contest to count one, transportation of a controlled substance, and admitted having sustained a prior drug conviction within the meaning of Health and Safety Code section 11370.2, subdivision (c). Pursuant to the negotiated disposition, the trial court sentenced appellant to a total determinate term of six years in state prison. This timely appeal and petition for writ of habeas corpus followed.

DISCUSSION

Appellant challenges his conviction on two grounds. First, in a direct appeal, appellant contends the trial court erred in denying his motion to suppress because the initial traffic stop by Officer Strickland was illegal. Second, in a petition for writ of habeas corpus, appellant contends he received ineffective assistance of counsel, in violation of his constitutional rights, because his attorney failed to adequately challenge Officer Strickland's credibility at the suppression hearing. Had such a challenge been made, appellant argues, he would have prevailed on the motion, leaving no evidentiary basis for a conviction. We address each challenge below.

I. Suppression of Evidence.

We first consider the trial court's denial of appellant's motion to suppress. "When reviewing the grant or denial of a motion to suppress, an appellate court must uphold the trial court's express or implied findings of fact if the facts are supported by substantial evidence." (*People v. Lim* (2000) 85 Cal.App.4th 1289, 1296.) We then employ our independent judgment to decide whether, under those facts, the search and seizure was legal. (*People v. Ruiz* (1990) 217 Cal.App.3d 574, 580; *People v. Ayala* (2000) 23 Cal.4th 225, 255.) Otherwise stated, the legality of a search or seizure is measured by "the facts, as found by the trier [of fact], against the constitutional standard of reasonableness. [Citations.] Thus, in determining whether the search or seizure was reasonable on the facts found by the [trier of fact], we exercise our independent judgment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362 [45 Cal.Rptr.2d 425, 902 P.2d 729].)" (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.)

"[S]tate and federal claims relating to exclusion of evidence on grounds of unreasonable search and seizure are measured by the same standard. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 76 [32 Cal.Rptr. 2d 33, 876 P.2d 519]; *In re Lance W.* (1985) 37 Cal.3d 873, 886-887 [210 Cal.Rptr. 631, 694 P.2d 744].) 'Our state Constitution [Cal. Const., art. I, § 13] thus forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal Constitution [U.S. Const., 4th Amm.] as interpreted by the United States Supreme Court.' (*In re Tyrell J.*, *supra*, at p. 76.)" (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

Thus, under binding United States Supreme Court authority, *Terry v. Ohio* (1968) 392 U.S. 1, 19, "the judicial inquiry into the reasonableness of a detention is a dual one – whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." (*People v. Brown* (1998) 62 Cal.App.4th 493, 496.) In this case, only the former inquiry – whether Officer Strickland's action was justified at its inception – is relevant. Specifically, the trial court denied appellant's motion to suppress after finding Officer Strickland was justified in initially detaining appellant based on his reasonable belief that appellant violated section 22450 and/or section 22500 of the Vehicle Code by stopping his vehicle beyond the stop sign limit line at the intersection. Vehicle Code section 22450, subdivision (a), requires the driver of a vehicle approaching a stop sign at an intersection to stop before crossing the stop sign limit line. Section 22500, subdivision (a), in turn, prohibits a driver from stopping within an intersection except under certain enumerated circumstances not applicable here.[2] (Veh. Code, §§ 22450, subd. (a), 22500, subd. (a).)

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[2] Vehicle Code section 22450 provides in relevant part: "The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection." (Veh. Code, § 22450, subd. (a).)

Vehicle Code section 22500 provides in relevant part: "No person shall stop, park, or leave standing any vehicle whether attended or unattended, except when

Appellant does not dispute that a "police officer may legally stop a [person] he suspects of violating the Vehicle Code for the purpose of issuing a citation." (*People v. Brown, supra,* 62 Cal.App.4th at pp. 496-497. See also *People v. Gallardo* (2005) 130 Cal.App.4th 234, 239, fn. 1 [a police officer's initial detention of defendant was justified based on his commission of a code violation for driving with a smashed taillight]; *Brendlin v. California* (2007) 551 U.S. 249, 255 ["in Fourth Amendment terms a traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief' "].) Rather, appellant claims there was insufficient evidence to raise a reasonable suspicion as to whether he violated the Vehicle Code in this case. Accordingly, appellant reasons, the subsequent search of his person and seizure of the subject evidence based on a purported Vehicle Code violation were constitutionally infirm. We turn to the relevant facts.

Officer Strickland testified at both the preliminary hearing and the hearing on appellant's motion to suppress. At the preliminary hearing, Officer Strickland testified that, when he first saw appellant's vehicle, it was stopped at the stop sign, with about three quarters of its body beyond the limit line. This testimony was consistent with Officer Strickland's statement in his police report that "[he] observed a vehicle that was stopped for the stop sign . . . [h]owever, three-quarters of the length of that vehicle was past the limit line."

At the hearing on the suppression motion, Officer Strickland testified that, when he first saw appellant's vehicle, it "was stopping for the stop sign." Officer Strickland further testified that, after first noticing appellant's vehicle, he saw the vehicle come to a complete stop after about 10 feet, at which point the vehicle's front bumper was "past the limit line . . . roughly seven feet." Officer Strickland never saw the vehicle stop before the limit line.

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necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places:
[¶] (a) Within an intersection, except adjacent to curbs as may be permitted by local ordinance." (Veh. Code, § 22500, subd. (a).)

When cross-examined regarding whether he had changed his testimony with respect to these facts, Officer Strickland explained that, at "the preliminary hearing, what I thought [defense counsel] meant by moving would be actually up to a decent speed, turning lanes, normal driving on city streets. I wasn't assuming that [counsel] w[as] meaning the ten feet that I saw the vehicle driving." Officer Strickland acknowledged that he did not know "if that car had stopped that few feet before the limit line and then was proceeding forward" when he first saw it, but reiterated that he never saw the vehicle stop before the limit line.

On redirect, Officer Strickland responded "No" when asked whether he was asked at the preliminary hearing whether "[he] ever saw this car moving before it came to a stop [at the stop sign]."

In subsequently denying appellant's motion, the trial court reasoned as follows: "Okay. Well, having heard the testimony – and of course we weren't out there at 1:30 in the morning on the 23rd of August. The police officer was. I don't think his prior testimony is particularly in conflict with his testimony here today.

"Vehicle Code – we're looking at 22450 of the Vehicle Code, really, and I'm not going to repeat that. I think we are all familiar with the elements of that particular . . . section.

"[Vehicle Code] section 22500 . . . states, in pertinent part, that 'No person shall stop, park or leave standing any vehicle whether it is attended or unattended in any of the following places: within an intersection or on a sidewalk,' and that is as modified.

"Now, I can make a finding that the police officer is fabricating his testimony here today or has previously given false testimony at the preliminary hearing, but I choose not to do that. Under the circumstances of this case, the officer testified that the defendant's vehicle did not come to a full stop until the front wheels had crossed that limit line, and I think that observation provided the officer with an objectively reasonable ground for the stop. I think the officer's conduct was reasonable under the circumstances, so I'm going to deny the suppression motion."

Applying the legal principles set forth above to the facts at hand, we thus must determine whether it was objectively reasonable for Officer Strickland to believe that appellant committed a possible violation of the Vehicle Code by stopping his vehicle beyond the limit line, thereby warranting the traffic stop. (*People v. White* (2003) 107 Cal.App.4th 636, 642.) Having afforded all presumptions in favor of the trial court's factual findings, as the law requires (*id.* at p. 641), we conclude that it was.

Specifically, the record demonstrates that Officer Strickland consistently testified that he saw appellant's vehicle stopped beyond the stop sign limit line on the night in question. Contrary to appellant's suggestion, nothing in Officer Strickland's testimony at the suppression motion hearing contradicted his earlier statements, both in the police report and at the preliminary hearing, that he observed appellant's vehicle stopped roughly seven to ten feet (about three-quarters of the length of the vehicle) beyond the limit line, and thus in the intersection, in violation of the Vehicle Code. (Veh. Code, §§ 22450, 22500.)

As appellant accurately notes, Officer Strickland further testified at the suppression motion hearing that, when he first observed appellant's vehicle, it was "stopping." In comparison, at the preliminary hearing, Officer Strickland testified that, when he first observed the vehicle, it was "stopped." However, Officer Strickland explained at the later hearing that, at "the preliminary hearing, what I thought [defense counsel] meant by moving would be actually up to a decent speed, turning lanes, normal driving on city streets. I wasn't assuming that [counsel] w[as] meaning the ten feet that I saw the vehicle driving." Officer Strickland also confirmed that he was never asked at the preliminary hearing whether "[he] ever saw this car moving before it came to a stop [at the stop sign]." After observing firsthand Officer Strickland's testimony on the stand (something this court did not do), the trial court accepted this explanation as "reasonable, credible and of solid value." (*People v. Johnson* (1980) 26 Cal. 3d 557, 578). We decline to second guess the trial court's judgment in this regard. (*In re Arturo D.* (2002) 27 Cal.4th 60, 77 [" 'the power to judge the credibility of the witnesses, resolve any

conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court' "].)

In so holding, we note that, even if Officer Strickland was not sure whether appellant stopped one time beyond the limit line, or stopped initially before the limit line and then moved forward beyond the limit line to get a better view of the intersection, as appellant suggests,[3] the officer nonetheless had grounds to reasonably suspect that a Vehicle Code violation may have occurred, thereby justifying his decision to detain appellant for purposes of an investigation. The law required nothing more.[4] (*In re Justin K.* (2002) 98 Cal.App.4th 695, 699-700 [the law requires a reasonable suspicion, not proof beyond reasonable doubt, to warrant an investigatory stop]. See also *United States v. Mariscal* (9th Cir. 2002) 285 F.3d 1127, 1130 ["If the facts are sufficient to lead an officer to reasonably believe that there was a violation, that will suffice, even if the officer is not certain about exactly what it takes to constitute a violation"].)

Because the facts as found by the trial court provided an objective legal basis for Officer Strickland's decision to detain appellant for a possible Vehicle Code violation, there was no violation of appellant's Fourth Amendment rights.

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[3] In making this point, appellant relies on the testimony and photography of Rick Williams, an investigator for the defense, who explained that a vehicle stopped behind this particular limit line would not be able to safely enter the intersection because a fence and vegetation obstructed the view of approaching vehicles. ~(RT 29-30)~

[4] We easily distinguish appellant's authority, *People v. White, supra*, 107 Cal.App.4th 636. There, the appellate court reversed the denial of a suppression motion on the ground that a traffic stop resting on a suspicion based solely on a police officer's mistake of law violated the Fourth Amendment. (*Id*. at p. 644.) Specifically, the police officer in that case mistakenly believed that an air freshener hanging from the rearview mirror of defendant's vehicle violated the Vehicle Code. Here, to the contrary, Officer Strickland correctly believed that stopping a vehicle beyond the limit line of a stop sign violated the Vehicle Code. (Veh. Code, §§ 22450, 22500.) Rather, the dispute is whether Officer Strickland made a *mistake of fact* regarding whether appellant committed such a violation. As such, appellant's authority is inapposite. (*People v. White, supra*, 107 Cal.App.4th at p. 644 [an officer's mistaken factual belief, held reasonably and in good faith, may provide reasonable suspicion for a traffic stop]; *In re Justin K.* (2002) 98 Cal.App.4th 695, 699-700 [same].)

II. Effectiveness of Counsel.

Appellant's remaining argument, set forth in his papers in support of the petition for writ of habeas corpus (petition), is that he received ineffective assistance from counsel in violation of his rights under the Sixth Amendment to the U.S. Constitution and article I, section 15 of the California Constitution.[5] Specifically, appellant contends he received constitutionally inadequate representation when his attorney failed to cross-examine Officer Strickland regarding information he had given his attorney suggesting the officer may have been biased against him. Had this failure not occurred, appellant continues, it is reasonably probable the outcome of this case would have been more favorable to him.

To prevail on a claim of ineffective assistance of counsel, a petitioner in a habeas proceeding must demonstrate that he or she has been deprived of effective assistance of counsel.[6] (*People v. Haskett* (1990) 52 Cal.3d 210, 248.) As such, "the defendant must show counsel's performance fell below a standard of reasonable competence, and that prejudice resulted." (*People v. Anderson* (2001) 25 Cal.4th 543, 569.) Prejudice in this context occurs only where defense counsel's deficient performance " 'so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " (*People v. Kipp* (1998) 18 Cal.4th 349, 366, quoting *Strickland v. Washington* (1984) 466 U.S. 668, 686.)

Moreover, "[i]f the record . . . fails to show why counsel acted or failed to act in the instance asserted to be ineffective, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation, the claim must be rejected . . . ." (*People v. Kraft* (2000) 23 Cal.4th 978, 1068-1069.) The

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[5] Appellant's unopposed request for judicial notice of the record filed in the appeal is granted.

[6] On February 24, 2010, we issued an order to show cause after concluding the factual allegations in appellant's petition, if proved, would entitle him to relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) We thus directed the prosecution to file a return justifying appellant's detention, limited to the issue of the effectiveness of his legal representation. (*Id*. at p. 475; § 1480.) The prosecution complied with our order by filing a timely return, and appellant therefore filed a traverse responding to the issues raised therein. (*People v. Duvall*, *supra*, at p. 477.)

reason is this. A strong presumption exists that counsel's conduct falls within the wide range of reasonable professional assistance. As such, " ' "the defendant must overcome the presumption that, under the circumstances, the challenged action '*might be considered sound trial strategy*.' " ' " (*People v. Burnett* (1999) 71 Cal.App.4th 151, 180, quoting *People v. Bunyard* (1988) 45 Cal.3d 1189, 1215 and *Strickland v. Washington, supra,* 466 U.S. at p. 689.)

In support of his claim of ineffective assistance of counsel, appellant offers several declarations. First, defense counsel for appellant in a previous, unrelated criminal matter submitted a declaration. In that declaration, the former counsel attested that appellant was involved in an incident on April 13, 2007 (April 13 incident), in which appellant was charged with one felony count of resisting an executive officer (§ 69) and three unidentified misdemeanor counts. Officer Strickland was one of two named victims in the incident. A hearing on a suppression motion was subsequently held, at which Officer Strickland was the sole police witness to testify for the prosecution. Following the hearing, at which Officer Strickland's credibility was one of the issues in controversy, the suppression motion was granted and the charges against appellant were dismissed.

Appellant also submitted a declaration on his own behalf in which he attested that he filed a citizen complaint against Officer Strickland shortly after "the reported incident of April 13, 2007," and that he later told his defense counsel in this matter about the complaint. Appellant also told defense counsel that he had been charged in the April 13 incident, but that a motion to suppress had been granted in which the testifying officer was Officer Strickland. Appellant was later informed that Officer Ferrier, who was Officer Strickland's partner during the April 13 incident, was fired from the police force.

Appellant's trial counsel in this matter, whose representation is now claimed to be inadequate, also submitted a declaration. This counsel attested that, while he "had been made aware of the fact that my client . . . had previously filed a complaint against Officer Strickland, and that [appellant] had previously prevailed in a suppression motion where Officer Strickland had been the only police officer who had testified, I did not believe any of this would be relevant. I planned to rely upon Officer Strickland's testimony at

the upcoming . . . suppression hearing and saw no merit in challenging his credibility." However, defense counsel acknowledged that, at the hearing, he was "surprise[d]" when Officer Strickland "significantly changed [his] testimony" regarding whether appellant's vehicle was moving or stopped when he first observed it on the night in question. "I realize that my knowledge of Officer Strickland's past history with [appellant] became an issue when Officer Strickland significantly changed his testimony . . . [and] I should have asked him about both matters in order to contest his credibility." Defense counsel explained he failed to do so, not for any tactical reason, but because he "was taken entirely by surprise by this incredibly unlikely testimony . . . ."

Finally, counsel for appellant for purposes of this appeal and petition filed a declaration in which he discussed the citizen complaint that appellant filed against Officer Strickland and his partner, Officer Ferrier, following the above-mentioned April 13 incident. In particular, appellate counsel attested that he called the Solano County Police Department (the Department) regarding this complaint, as well as appellant's claim that Officer Ferrier had later been discharged for cause. Appellate counsel attested that the Department "did confirm that Officer Ferrier had been discharged for cause from the police force." However, the Department "refused to divulge the reasons for Officer Ferrier's dismissal."

With these declarations in mind, we thus must determine whether defense counsel's performance in this case was "below a standard of reasonable competence, and that prejudice resulted." (*People v. Anderson*, *supra*, 25 Cal.4th at p. 569.) In doing so, we first note, as the prosecution points out, that appellant has offered no evidence of any actual wrongdoing by Officer Strickland in connection with the April 13 incident. Appellant does, however, offer evidence that (1) he prevailed on a suppression motion following a hearing at which Officer Strickland was the sole police officer to testify for the prosecution, and (2) he subsequently filed a citizen complaint against Officer Strickland and Officer Ferrier raising allegations of excessive force and other acts of misconduct, the result of which is "unknown." In addition, appellant offers evidence that

Officer Strickland's *partner* in the April 13 incident, Officer Ferrier, was later discharged by the Department, but the reason for his discharge is unknown.

Thus, while appellant has failed to show any actual wrongdoing by Officer Strickland, he has shown that the trial court presiding over the suppression hearing in the previous case rejected Officer Strickland's testimony and dismissed the charges against appellant, and that Officer Strickland was thereafter the subject of a public complaint filed by appellant accusing him of engaging in excessive force and other acts of misconduct while on official duty. This, we conclude, is sufficient, to at least raise an inference that Officer Strickland possessed a motive to lie about the events leading up to appellant's arrest on the night in question.

Further, we conclude this possible motive to lie should have been explored by defense counsel during his cross-examination of Officer Strickland in this matter. Indeed, every defendant facing criminal prosecution has a constitutional right under the Sixth Amendment to be confronted with the witnesses against him. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678 [" ' "[T]he main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination*" ' (*Id*. at pp. 315-316, quoting 5 J. Wigmore, Evidence § 1395, p. 123 (3d ed. 1940) (emphasis in original)"].) And most significantly for our purposes, "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." (*Delaware v. Van Arsdall, supra*, 475 U.S. at pp. 678-679. See also Evid. Code, § 780.)[7] For this reason, as other courts have recognized, the failure to

[7] Evidence Code section 780 provides as follows: "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: [¶] (a) His demeanor while testifying and the manner in which he testifies. [¶] (b) The character of his testimony. [¶] (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies. [¶] (d) The extent of his opportunity to perceive any matter about which he testifies. [¶] (e) His character for honesty or veracity or their opposites. [¶] (f) The existence or nonexistence of a bias, interest, or other motive. [¶] (g) A statement previously made by him that is consistent with his testimony

present available evidence relating to the motivation or credibility of a witness crucial to the defense's case may indeed constitute ineffective assistance of trial counsel. (*People v. Rodriguez* (1977) 73 Cal.App.3d 1023, 1031.)

Here, not only did defense counsel fail to address crucial evidence relating to Officer Strickland's credibility, defense counsel thereafter admitted there was no strategic justification for his inaction. While the prosecution suggests there could in fact have been a tactical reason for this failure, defense counsel directly acknowledged that he should have addressed such evidence, but failed to merely because Officer Strickland's "significantly changed" testimony "surprise[d]" him during cross-examination. Under these circumstances, we have no trouble concluding that defense counsel's performance was constitutionally deficient. (*People v. Anderson*, *supra*, 25 Cal.4th at p. 569.)

Remaining for our consideration is whether this constitutionally infirm performance was prejudicial to appellant. As set forth above, without prejudice, there is no claim for ineffective assistance of counsel, no matter how poor the performance. (*People v. Kipp, supra,* 18 Cal.4th at pp. 367-368; *People v. Rodriguez, supra*, 73 Cal.App.3d at p. 1031.) Here, the prosecution for the most part ignores the prejudice issue, standing on its assertion that there was no ineffective assistance of counsel in the first place. However, having already rejected this argument, we return to the record to determine whether there is in this case "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' (*Strickland v. Washington, supra*, 466 U.S. at p. 694 . . .)" (*People v. Bolin* (1998) 18 Cal.4th 297, 333; *People v. Wader* (1993) 5 Cal.4th 610, 636 ["prejudice" requires a showing that "it is reasonably probable that, absent counsel's deficiencies, a more favorable result would have been obtained"].)

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at the hearing. [¶] (h) A statement made by him that is inconsistent with any part of his testimony at the hearing. [¶] (i) The existence or nonexistence of any fact testified to by him. [¶] (j) His attitude toward the action in which he testifies or toward the giving of testimony. [¶] (k) His admission of untruthfulness."

"As a general rule, 'evidence which merely impeaches a witness is not significant enough to make a different result probable . . . .' (*People v. Huskins* (1966) 245 Cal.App.2d 859, 862 [54 Cal.Rptr. 253].)" (*People v. Green* (1982) 130 Cal.App.3d 1, 11.) However, in this case, the prosecution relied upon the testimony of Officer Strickland to justify appellant's detention. Significantly, the prosecution did not offer evidence corroborating his testimony. Therefore, if Officer Strickland's testimony had been found untrustworthy, there would have been no evidence to support the detention which led to appellant's arrest and the seizure of drugs from his person. Under these circumstances, we may indeed conclude that, but for defense counsel's failure to impeach Officer Strickland with evidence of his possible bias against appellant, it is reasonably probable that appellant would have achieved a more favorable outcome in this matter. (*People v. Wader, supra*, 5 Cal.4th at p. 636; *People v. Kipp, supra,* 18 Cal.4th at pp. 367-368.)

Accordingly, we conclude that appellant has indeed established a violation of his constitutional right to effective assistance of counsel, rendering his current detention unlawful. Reversal and remand to the trial court is thus required.

DISPOSITION

Having previously granted the petition for writ of habeas corpus, we now reverse appellant's conviction on grounds of ineffective assistance of counsel and remand this matter to the trial court for a new hearing on appellant's motion to suppress evidence.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.